IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION No. 664 OF 2005

M/s. S. B. Corporation. Petitioner

Vs.

M/s. Aluplex India Pvt. Ltd. Respondent

....

Ms. Hira Sharma i/b M/s. Mahesh Shah & Co. for petitioner.

Mr. Prakash Nichani i/b P.V. Nichani & Co. for respondent.

....

CORAM : S. C. DHARMADHIKARI, J.

DATE : MARCH 16, 2006.

P.C. :-

1 Heard the learned advocate appearing for petitioner and the respondent. Perused the petition and the reply as well as rejoinder thereto. The case of the petitioner is that for supplies which were made some time between November and July 2002 a cheque was forwarded by the respondent on 28th July, 2002 for Rs.2,13,462/-. The cheque was returned unpaid on 29th July, 2002 by company's bankers. To save the bar of limitation in filing of this proceeding in September 2005, reliance is placed upon a cash transaction in August 2004, where the Company is

alleged to have made cash purchase of Rs. 94/- and that is how bar of limitation is saved according to the petitioner.

2. In the reply affidavit the company apart from asserting its sound financial position, has contended that the cheque was dishonoured / returned unpaid way back in July, 2002 and thereafter no transaction has taken place. There is no assurance to pay, nor there are any cash transactions. Further, the invoices and acknowledgements are also not produced. In rejoinder a bill of Rs. 94/- is sought to be produced, which contains no particulars.

3. It is inconceivable that the Company which had stopped dealings with petitioner after dishonour of the cheque, would come forward and purchase goods of cash value of Rs. 94/- for, meeting so called urgent requirement. The company is bona fide disputing the winding up petition. This proceeding is not the remedy for the petitioner in these circumstances.

4. The Company Petition is therefore dismissed.

(S. C. DHARMADHIKARI, J.)